

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

PAULA GARST

v.

UNITED STATES OF AMERICA

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2:10-CV-279

**REPORT AND RECOMMENDATION TO
DISMISS MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE
AND TO DENY AS MOOT MOTION TO DISMISS**

Before the Court is the “Petition for a Writ of Habeas Corpus by a Person in Federal Custody,” filed by defendant Paula Garst in the Northern District of Texas, Fort Worth Division. That Court construed the petition as a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 and transferred the case to this Court. In an order issued December 20, 2011, the Court recited its concerns, fueled by the Federal Bureau of Prison Online Inmate Locator Database, that defendant has been released from custody. Defendant has failed to update her address with the Court and is therefore in violation of the Court’s Local Rule 83.13(a). Her failure to give the Court the ability to contact her additionally indicates to the Court that defendant no longer wishes to pursue the instant motion. The Court has given defendant the opportunity to address these concerns in a December 20, 2011 order directing defendant to respond, but the Court’s order has gone unanswered. Specifically, on January 9, 2012, the Court received its Order back from the address indicated by defendant as her mailing address with the notation “Return to Sender Attempted - Not Known Unable to Forward.” It is the Court’s opinion that defendant’s actions indicate she no longer wishes to continue with this case.

Consequently, it is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the “Petition for a Writ of Habeas Corpus by a Person in Federal Custody” be DISMISSED for want of prosecution.

Additionally, the Government has filed a Motion to Dismiss in this case (document 13). If the District Judge determines dismissal of the case for want of prosecution is appropriate, the undersigned additionally recommends the pending Motion to Dismiss be DENIED as moot.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 10th day of January, 2012.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

* NOTICE OF RIGHT TO OBJECT *

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).